

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-070832
	:	TRIAL NO. B-9908530
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
LEVON MILLOW,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant Levon Millow was indicted on three counts of rape² and two counts of gross sexual imposition.³ A jury found Millow guilty on the three rape counts and on one count of gross-sexual-imposition and acquitted him on the remaining count.

On appeal, counsel for Millow has filed a brief in accordance with *Anders v. California*, stating that counsel has conscientiously reviewed the record and has found no nonfrivolous grounds on which to appeal.⁴ Counsel requests permission to withdraw and, as required by *Anders*, requests that this court independently examine the record to determine if the proceedings below were free of prejudicial error. Counsel has properly notified Millow of the filing of this *Anders* brief, providing sufficient time for Millow to provide grounds for this

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² R.C. 2907.02(A)(1)(b).

³ R.C. 2907.05(A)(1).

⁴ *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396.

appeal. Millow has responded with the assertion that the trial court erred in denying his motion to dismiss three of the charges against him.

The thrust of Millow's argument is that the evidence adduced at trial failed to show that the offenses had occurred within the time parameters listed in the indictment and the bill of particulars. In support of his argument, Millow cites the victim's testimony that her two sisters had been present during three of the offenses. He argues that because the younger sister had not yet been born when the offenses were alleged to have been committed, the victim's testimony and the evidence at trial did not establish that the offenses had been committed within the time frame listed in the indictment and the bill of particulars. We are not convinced.

The older sister had been born at the earliest time during which the indictment alleged that the offenses had occurred. The victim's young age could easily account for the inconsistency in her testimony. Though the victim testified that her "sisters" had been around when the offenses had been committed, we disagree that the evidence contradicted the indictment and the bill of particulars. One sister had been born, and the evidence otherwise supported the victim's testimony such that a jury could have found that the state had proved all elements of the offenses beyond a reasonable doubt.⁵

After examining the entire record, we are satisfied that counsel has provided Millow with a diligent and thorough review of the proceedings, and that the proceedings below were free of prejudicial error.

We conclude that Millow's appeal is without merit and wholly frivolous. Therefore, we overrule counsel's motion to withdraw and affirm the judgment of the trial court.

⁵ See *State v. Millow* (June 15, 2001), 1st Dist. Nos. C-000510 and C-000524.

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Although we hold that this appeal is frivolous under App.R. 23 and without “reasonable cause” under R.C. 2505.35, we refrain from taxing costs and expenses against Millow because he is clearly indigent. Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., PAINTER and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on October 8, 2008

per order of the Court _____.

Presiding Judge